

NOTE: Appearing first is the Full Board summary which is the last meeting of the day. The committees will follow in the order of which time they were conducted. The Dealer Board staff felt it would benefit our readers to have the last meeting of the day appear first on the website.

~ FINAL ~

Meeting Summary **Motor Vehicle Dealer Board** Monday, March 12, 2007

Chairman D.B. Smit called the Dealer Board meeting to order at 11:25 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. The roll was called and there were 14 Board members present. Present were members Lynn Hooper, Todd Hyman, David Lacy, Wanda Lewark, Chip Lindsay, Hugh McCreight, Pat Patrick, Kevin Reilly, Vince Sheehy, Larry Shelor, Jimmy Whitten, Robert Woodall and Thomas Woodson. (Absent: Jonathan Blank, Thomas Moorehead and Frank Pohanka). Executive Director Bruce Gould, Prin Cowan, Wanda Neely, Randy Scott and Debbie Allison represented the Dealer Board. Don Boswell and Jim Gurney represented DMV. Eric Fiske represented the Attorney General's Office. Alice Weedon acted as Recording Secretary.

The January 8, 2007 meeting summary was approved.

PUBLIC COMMENT

STATUTORY COMMITTEE REPORTS

Dealer Practices Committee

- **David Mumpower and Buy-Rite Auto Sales.** Chairman Pat Patrick summarized for the Board the discussion held in the Committee meeting regarding David Mumpower and Buy-Rite Auto Sales. Based on that discussion, Mr. Patrick made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning David L. Mumpower for alleged violation of Va. Code §46.2-1575(9) (having been convicted of a criminal act involving the business of selling vehicles). Based on due consideration, the Board believes a civil penalty should be assessed against David L. Mumpower. The Board hereby assesses a \$500 civil penalty against David L. Mumpower; and based on due consideration, the Board believes that successfully completing the dealer-operator course would benefit Mr. Mumpower in running his dealership. The Board mandates that Mr. Mumpower successfully complete the dealer-operator course by August 10, 2007. Failure to successfully complete the course by this date will result in a suspension of all licenses and certificates issued to Mr. Mumpower by the Board until what time Mr. Mumpower has successfully completed the course.

Robert Woodall seconded. The motion carried unanimously.

- **Abdul L. Rahimi and Insiders Auto Sales.** Chairman Pat Patrick summarized for the Board the discussion held in the Committee meeting regarding Abdul L. Rahimi and Insiders Auto Sales. Based on that discussion, Mr. Patrick made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning Abdul L. Rahimi and Insiders Auto Sales for alleged violations of Va. Code §§46.2-1537 and 46.2-1575(2). Based on due consideration, the Board believes a civil penalty should be assessed against Abdul L. Rahimi and Insiders Auto Sales. The Board hereby assesses a \$750 civil penalty against Abdul L. Rahimi and Insiders Auto Sales; and based on due consideration, the Board believes that successfully completing the dealer-operator course would benefit Mr. Rahimi in running his dealership. The Board mandates that Mr. Rahimi successfully complete the dealer-operator course by August 10, 2007. Failure to successfully complete the course by this date will result in a suspension of all licenses and certificates issued to Mr. Rahimi by the Board until what time Mr. Rahimi has successfully completed the course.

Todd Hyman seconded. The motion carried unanimously.

- **Charlie J. Royster and Little Charlie's Auto Sales.** Chairman Pat Patrick summarized for the Board the discussion held in the Committee meeting regarding Charlie J. Royster and Little Charlie's Auto Sales. Based on that discussion, Mr. Patrick made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning Charlie Royster and Little Charlie's Auto Sales for alleged violations of Va. Code §§46.2-1529.1(B), 46.2-1575(1), 46.2-1575(4) and 46.2-1575(7). Based on due consideration, the Board believes no action should be taken against Charlie Royster and Little Charlie's Auto Sales. The Board hereby takes no further action against Charlie Royster and Little Charlie's Auto Sales.

Robert Woodall seconded. The motion carried unanimously.

- **John M. Stamper and Stamper and Stamper Used Cars.** Chairman Pat Patrick summarized for the Board the discussion held in the Committee meeting regarding John M. Stamper and Stamper and Stamper Used Cars. Based on that discussion, Mr. Patrick made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning John M. Stamper and Stamper and Stamper Used Cars for alleged violations of Va. Code §§46.2-1515, 46.2-1516, 46.2-1529, 46.2-1550 and 46.2-1575(2). Based on due consideration, the Board believes a civil penalty should be taken/assessed against John M. Stamper and Stamper and Stamper Used Cars. The Board hereby assesses a \$1,000 civil penalty against John M. Stamper and Stamper and Stamper Used Cars and based on due consideration, the Board believes that successfully completing the dealer-operator course would benefit Mr. Stamper in running his dealership. The Board mandates that Mr. Stamper successfully complete the dealer-operator course by August 10, 2007. Failure to successfully complete the course by this date will result in a suspension of all licenses and certificates issued to Mr. Stamper by the Board until what time Mr. Stamper has successfully completed the course.

Lynn Hooper seconded. The motion carried unanimously.

- **Adjudicated Case: Checkered Flag.** Pat Patrick indicated that at the Committee meeting the members discussed the case involving Checkered Flag and an "order confirming arbitration award and judgment order" against Checkered Flag in the amount of \$110,428.45 and it was discussed whether or not an informal fact-finding conference should be convened.

Motion was made by Pat Patrick to take no action. Robert Woodall seconded. All in favor: 13 (Smit, Sheehy, Hooper, Hyman, Lewark, Lindsay, McCreight, Patrick, Reilly, Shelor, Whitten, Robert Woodall and Woodson). Opposed: 1 (Lacy). The motion carried.

Licensing Committee

Chairman Todd Hyman summarized discussions held and actions that were taken during the Committee Meeting.

- **S. Michael Laughlin and Cars Unlimited.** Chairman Todd Hyman summarized for the Board the discussion held in the Committee meeting regarding S. Michael Laughlin and Cars Unlimited. Based on that discussion, Mr. Hyman made the following motion: The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning S. Michael Laughlin and Cars Unlimited for alleged violations of Va. Code §§46.2-1575(9). Based on due consideration, the Board believes that successfully completing the dealer-operator course would benefit Mr. Laughlin in running his dealership. The Board mandates that Mr. Laughlin successfully complete the dealer-operator course by August 10, 2007. Failure to successfully complete the course by this date will result in a suspension of all licenses and certificates issued to Mr. Laughlin by the Board until what time Mr. Laughlin has successfully completed the course.

Lynn Hooper seconded. The motion carried unanimously.

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

- Don Boswell, Chief of Investigations for DMV, gave a brief update on ISO investigations relating to curbstoning since the January Board meeting.

NEW BUSINESS

- **DMV Internet Fee Calculator.** Jim Gurney indicated that DMV is working on a WEB site application that would allow dealers or consumers to easily determine the amount sales and use tax and titling and registration fees. Users would be able to access the application very quickly. When they wanted to get an estimate, of fees/taxes, one would simply enter the sales price and where you live. At the next Dealer Board meeting, Mr. Gurney will demonstrate the program. One question asked was would this only calculate Virginia fees and Mr. Gurney indicated yes.
- **Executive Director's Report.** Bruce Gould introduced the Dealer Board's newest employees Prin Cowan and Randy Scott. Bruce indicated that Peggy will return from surgery sometime next week and that Debbie Allison will be retiring some time this summer. Bruce also reminded a few board members about their outstanding financial disclosures and to get them back to him or mail them by April 2. The Supplemental License application will be streamlined to make it easier for dealers get the license. The proposal to increase fees is going well and should be approved soon. The new fees could go into effect as soon as December or January 1.

The next meeting will be scheduled for May 14, 2007.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

There being no further business to come before the Motor Vehicle Dealer Board, Chairman Smit adjourned the meeting at 12:21 p.m.

Meeting Summary

Dealer Practices Committee

Monday, March 12, 2007

Chairman Pat Patrick called the Dealer Practices Committee meeting to order at 8:38 a.m. in Room 702 of the DMV Headquarters Building at 2300 W. Broad Street in Richmond. Present were Committee members Lynn Hooper, David Lacy, Hugh McCreight, Kevin Reilly, Jimmy Whitten and Robert Woodall. (Absent: Jonathan Blank, Thomas Moorehead and Frank Pohanka) Board members present: Tommy Woodson, Todd Hyman, D.B. Smit, Vince Sheehy, Wanda Lewark, Chip Lindsay and Larry Shelor. Executive Director Bruce Gould, Prin Cowan, Randy Scott, Wanda Neely and Debbie Allison represented the Dealer Board. Jim Gurney represented DMV. Eric Fiske was present from the Attorney General's Office.

The January 8, 2007 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

- **Update: January Actions.** Bruce Gould reported on the actions taken at the Dealer Practices Committee meeting on January 8, 2007.

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

Review and Action: Informal Fact-Finding Conference:

- **David L. Mumpower and Buy-Rite Auto Sales.** On December 19, 2006, an informal fact-finding conference was conducted to address the alleged violation of VA Code Section 46.2-1575(9) (having been convicted of a criminal act involving the business of selling vehicles). Based on the information provided at the conference, the hearing officer recommended that the MVDB field representative should make frequent inspections at Buy Rite Auto Sales to ensure all rules and regulations are being followed, Mr. Mumpower should be require to attend a Dealer-Operator Course within the next three months and he should be assessed a civil penalty of \$500.00.

Motion was made by Kevin Reilly to accept the hearing officer's recommendation with the modification that Mr. Mumpower complete and pass the test within 6 months. Robert Woodall seconded. The motion carried unanimously.

- **Abdul L. Rahimi and Insiders Auto Sales.** On January 26, 2007, an informal fact-finding conference was conducted to address the alleged violations of Virginia Code Sections 46.2-1537 (Prohibits dealers from paying a commission or compensating any person in connection with the sale of a motor vehicle unless the persons is licensed as a salesperson and employed by the dealer) and 46.2-1575(2) (Failure to comply subsequent to receipt of a written warning from the Department or the Board or any willful failure to comply with any provision of this chapter or any regulation promulgated by the Commissioner or the Board under this chapter). Based on the information provided at the conference, the hearing officer recommended that Mr. Rahimi should be assessed a civil penalty of \$250.00 for violating 46.2-1537 and \$500.00 for violating 46.2-1575(2) for a total civil penalty of \$750.00.

Mr. Rahimi was present and available for questions.

Motion was made by Robert Woodall to accept the hearing officer's recommendation with the modification that Mr. Rahimi complete and pass the course within 6 months. Hugh McCreight seconded. The motion carried unanimously.

- **Charlie Royster and Little Charlie's Auto Sales.** On January 23, 2007, an informal fact-finding conference was conducted to address the alleged violations of Virginia Code Sections 46.2-1529.1(B) (Prohibits a dealer from selling a used motor vehicle at retail "AS IS" and excluding all warranties unless the dealer provides they buyer, prior to sale, a separate written disclosure as to the effect of an "AS IS" sale), 46.2-1575(1) (Prohibits any material misstatements or omission in applicant for license, dealer's license plates, certificates of dealer registration, certificate of qualification, or certificate of title), 46.2-1575(4) (Prohibits defrauding any retail buyer, to the buyer's damage, or any other person in the conduct of the licensee's business or registrant's business), 46.2-1575(6) (Prohibits using deceptive acts or practices) and 46.2-1575(7) (Prohibits knowingly advertising by any means any assertion, representation, or statement of fact which is untrue, misleading, or deceptive in any particular relating to the conduct of the business licensed or registered or for which a license or registration is sought). Based on the information provided at the conference, the hearing officer recommended that Mr. Royster should not be assessed any civil penalty. Mr. Royster, with the supervision of Mr. Guill, should undertake a thorough review of his forms to eliminate all old or out of date forms and Mr. Royster should take the Dealer-Operator Course as soon as one is available in his area.

Mr. Royster was present and spoke on his own behalf.

Motion was made by Robert Woodall to not accept the hearing officer's recommendation and do nothing. Mr. Woodall's rationale was that he felt that Mr. Royster had been in the business long enough to know how it works, therefore it would be pointless to take the Dealer-Operator Course. David Lacy seconded. The motion carried unanimously.

- **John M. Stamper and Stamper and Stamper Used Cars.** On February 1, 2007, an informal fact-finding conference was conducted to address the alleged violations of Virginia Code Sections 46.2-1515 (Location to be specified; display of license; change of location), 46.2-1516 (Supplemental sales location), 46.2-1529 (Failure to maintain all dealer records on the premises of the licensed location in a manner that permits systematic retrieval, including records regarding employees; lists of vehicles in inventory for sale, resale, or on consignment; vehicle purchases, sales, trades, and transfers of ownership; collections of taxes; titling, uninsured motor vehicle, and registration fees; odometer disclosure statements; records of permanent dealer registration plates assigned to the dealer and temporary transport plates and temporary certificates of ownership), 46.2-1550 (Failure to properly limit the use of dealer license plates on vehicles in the dealer's inventory to dealers, their spouses, license salespersons and employees of the dealership. To be eligible for a salesperson to use dealer plates, they must work for the dealership at least 25 hours per week on a regular basis and be compensated for their work) and 46.2-1575(2) (Failure to comply subsequent to receipt of a written warning from the Department or the Board or any willful failure to comply with any provision of this chapter or any regulation promulgated by the Commissioner or the Board under this chapter). Based on the information provided at the conference, the hearing officer recommended that a civil penalty of \$250 for being found in violation for each of the following section codes 46.2-1515, 46.2-1516, 46.2-1529 and 46.2-1550, for a total civil penalty of \$1,000.00. It was further recommended that Mr. Stamper take the Dealer-Operator Course and Mr. Stamper's dealership should be inspected at least once per year for the next three years.

Motion was made by David Lacy to accept the hearing officer's recommendation. Lynn Hooper seconded. The motion carried unanimously.

- **Report on Variance Requests (Dealer Hours and Storage of Dealer Records).** Bruce Gould reported that there were 4 requests to maintain records other than at the licensed location and 5 requests for on-line dealers. All were approved.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

- **Adjudicated Case: Checkered Flag.** Bruce Gould indicated that on May 8, 2006, the Dealer Practices Committee and Full Board adopted a resolution on "Action on Adjudicated Cases That Do Not Involve the Transaction Recovery Fund". On January 26, 2007, the Circuit Court of the City of Virginia Beach issued an "Order Confirming Arbitration Award and Judgment Order" against Checkered Flag in the amount of \$110,428.45, relating to a consumer complaint. Bruce requested input on whether or not to conduct an informal fact-finding conference. General discussion followed.

Motion was made by David Lacy to conduct an informal fact-finding conference against Checkered Flag. Motion failed for a lack of a second.

Motion was made by Lynn Hooper to take no further action. Robert Woodall seconded. All in favor: 6 (Patrick, McCreight, Hooper, Reilly, Whitten, Woodall). Opposed: 1 (Lacy). The motion carried.

The next meeting was scheduled for May 14, 2007.

The meeting adjourned at 9:18 a.m.

Meeting Summary

Dealer Licensing Committee

Monday, March 12, 2007

Chairman Todd Hyman called the Dealer Licensing Committee meeting to order at 9:22 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members Wanda Lewark, Chip Lindsay, Kevin Reilly, Vince Sheehy, Larry Shelor, Jimmy Whitten, Robert Woodall and Thomas Woodson. Other Board members present: D. B. Smit, Lynn Hooper, David Lacy, Pat Patrick and Hugh McCreight. Executive Director Bruce Gould, Prin Cowan, Randy Scott, Wanda Neely and Debbie Allison represented the Dealer Board. Jim Gurney represented DMV. Eric Fiske represented the Attorney General's Office.

The January 8, 2007 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

OLD BUSINESS FROM THE FLOOR

- **Issue Tabled from the January Meeting: Continuing Dealer Education Task Force.** At the January meeting, David Lacy suggested that the Board explore a continuing education requirement. It was tabled until the March meeting and the conclusion of the General Assembly. Bruce Gould and Todd Hyman indicated that they will be taking volunteers to form this task force. Please contact David Lacy or Bruce Gould if interested.

NEW BUSINESS

Review and Action: Informal Fact-Finding Conference:

- **S. Michael Laughlin and Cars Unlimited.** On December 19, 2006, an informal fact-finding conference was conducted to address the alleged violation of Virginia Code Section 46.2-1575(9) (having been convicted of a criminal act involving the business of selling vehicles). Based on the information provided at the conference, the hearing officer recommended that Mr. Laughlin attend the Dealer-Operator Course as soon as possible, pay close attention to Mr. Laughlin and his dealership by the field representative. Mr. Laughlin should establish some standard operating procedures regarding record keeping, completion of paperwork, etc and these procedures should be known and followed by everyone in the dealership and that he be assessed a civil penalty of \$250.00

Mr. Laughlin was present and spoke on his own behalf.

Motion was made by Larry Shelor to modify the hearing officer's recommendation with no civil penalty assessed and to complete and pass the Dealer-Operator Course within 6 months. Jimmy Whitten seconded. The motion carried unanimously.

- **Richard D. Wright.** On February 15, 2007, an informal fact-finding conference was conducted to address the alleged violations of Virginia Code Sections 46.2-1575(4) (Defrauding any retail buyer or any other person), 46.2-1575(6) (Using deceptive acts or practices), 46.2-1575(8) (Consumer related fraud), 46.2-1575(9) (convicted of criminal act involving the sale of vehicles) and 46.2-1575(11) (Having been convicted of a felony). Based on the information provided at the conference, the hearing officer recommended that the executive directors decision to deny the license be sustained.

Mr. Wright was present and spoke on his own behalf.

Motion was made by Robert Woodall to grant Mr. Wright a sales license, but to flag his record so that he cannot become a Dealer-Operator. Jimmy Whitten seconded.

Substitute motion was made by Kevin Reilly to modify the above motion by including a clause that Mr. Wright's employer is to write a letter to the Dealer Board indicating the status of Mr. Wright's progress, after 6 months of employment.

NEW BUSINESS FROM THE FLOOR

The next meeting was scheduled for May 14, 2007.

The meeting adjourned at 9:55 a.m.

Meeting Summary
Advertising Committee
Monday, March 12, 2007

Vice-Chairman Lynn Hooper called the Advertising Committee meeting to order at 10:04 a.m. in Room 702, at DMV Headquarters, 2300 West Broad Street, Richmond, Virginia. Present were Committee members Lynn Hooper, Chip Lindsay, Hugh McCreight, Pat Patrick and Larry Shelor. (Absent: Jonathan Blank, Frank Pohanka and Thomas Moorehead) Other Board members present: D. B. Smit, Kevin Reilly, Thomas Woodson, Todd Hyman, Robert Woodall, David Lacy, Wanda Lewark and Jimmy Whitten. Executive Director Bruce Gould, Prin Cowan, Randy Scott, Wanda Neely and Debbie Allison represented the Dealer Board. Jim Gurney represented DMV. Eric Fiske represented the Attorney General's Office.

The January 8, 2007 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

OLD BUSINESS FROM THE FLOOR

Robert Woodall discussed the issue of "buy one, get one". He felt this type of advertising was deceitful and misleading. After some general discussion, it was the consensus of the Committee to keep an eye out on this type of advertising. Bruce Gould also requested that if any of the members see or hear this type of advertising to get a copy of the paper or script and send it to the Dealer Board for review.

NEW BUSINESS

The next meeting will be May 14, 2007.

NEW BUSINESS FROM THE FLOOR

The meeting adjourned at 10:12 a.m.

Meeting Summary
Transaction Recovery Fund Committee
Monday, March 12, 2007

Chairman David Lacy called the Transaction Recovery Fund Committee meeting to order at 10:13 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members: Lynn Hooper, Wanda Lewark, Vince Sheehy, Larry Shelor and Thomas Woodson. (Absent: Jonathan Blank) Other Board members present: Kevin Reilly, Robert Woodall, Todd Hyman, D.B. Smit, Pat Patrick, Chip Lindsay, Hugh McCreight and Jimmy Whitten. Executive Director Bruce Gould, Prin Cowan, Randy Scott, Wanda Neely and Debbie Allison represented the Dealer Board. Jim Gurney and Don Boswell represented DMV. Eric Fiske represented the Attorney General's Office.

The January 8, 2007 summary was approved.

PUBLIC COMMENT

- **HB-1779.** David Boling discussed the surprise amendment appearing on House Bill 1779, indicating new language: "Excluded from the amount of any unpaid final judgment on which a claim against the Fund is based shall be any sums representing interest, punitive *damages*, and exemplary damages. *Awards from the Fund shall be limited to reimbursement of costs paid to the dealer for all charges related to the vehicle including without limitation, the sales price, taxes, insurance, and repairs; other out of pocket costs related to the purchase, insuring and registration of the vehicle, and to the loss of use of the vehicle by the purchaser.*" (new language in italics). Mr. Boling requested that the Board request that the Governor veto HB 1779. Ann Gambardello, of VADA, indicated that this bill will control the outrageous attorney fees awards, making sure the plaintiff's are going to be required, by the Board, to present some evidence as to what these attorney fees are for and how they are related to the compensable part of the claim. General discussion followed. It was the consensus of the Committee members that this bill would not do harm to the Recovery Fund and it was too late to attempt to change or veto the bill. If the new language proves to be a problem, the Board could work the General Assembly in the future to make necessary changes.

OLD BUSINESS

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

Review and Action: Informal Fact-Finding Conference Results:

- **Raymond E. Greene and Edward Mayo & Premier Auto.** On March 24, 2003, Mr. Green entered into an agreement with Mr. Mayo for the purchase, via Internet, of a 1999 Pontiac Sunfire for a total of \$4,402.00. Mr. Mayo indicated that he had a clear title to the vehicle. On March 25, 2003, Mr. Greene transferred the total purchase price of \$4,402.00 as Mr. Mayo had instructed him to do. On April 4, 2003, Mr. Mayo wrote to Mr. Greene alleging a vague problem that had arose with the purchase of the vehicle and indicated the money would be refunded. On April 30, 2003, Mr. Mayo sent another letter to Mr. Greene indicating responsibility and that a refund would be sent as soon as possible. Despite Mr. Mayo's assurances, Mr. Greene never received the vehicle or any refund. Through investigations, Mr. Greene learned that Mr. Mayo had defrauded numerous eBay purchasers. Mr. Greene then sought legal counsel in order to file for a judgment against Edward Mayo, for fraud in connection with the purchase in a State or Federal Court of Virginia.

On July 10, 2006, Kellam Parks, counsel for Mr. Greene, submitted to the Dealer Board an affidavit and copy of Warrant in Debt. On July 13, 2006, the Dealer Board acknowledged receipt of Mr. Greene's claim and requested additional documentation regarding his claim. On August 1, 2006, Mr. Parks submitted all the additional documentation as requested by the Board. On October 16, 2006, the General District Court awarded Mr. Greene judgment against Mr. Mayo in the amount of \$15,000.00 plus \$58.00 in costs and attorney fees in the amount of \$3,750.00.

After carefully reviewing all documentation, staff recommends that the Recovery Fund Committee and Full Board approve Mr. Greene's claim in the amount of \$8,608.00. This amount is based on the actual damages \$4,800 (\$4,402 purchase price and \$398.00 insurance), attorney fees in the amount of \$3,750.00 and \$58.00 in court costs. On February 28, 2007, an informal fact-finding conference was conducted and based on the information presented at the conference the hearing officer conducting the conference recommended that the Transaction Recovery Fund Committee and the Full Board members consider approving the amount of \$8,608.00.

Motion was made by Lynn Hooper to accept the hearing officer's recommendation. Vince Sheehy seconded. The motion carried unanimously.

Request for Denial of Claim:

- **Jean H. Rutherford and Steven Kendall & Autos Wholesale, Inc. (Emotors).** On September 7, 2001, Mr. Rutherford met with Steven Kendall regarding a 1999 Audi that she owned and was trying to sell. Mr. Kendall, on behalf of Prestige Motor Coach, Inc. (Now Emotors) agreed to sell the vehicle for Ms. Rutherford on consignment and that Ms. Rutherford would receive \$28,000.00 from the sale of the vehicle and Prestige would receive any amount above \$28,000.00.

On November 7, 2001, Ms. Rutherford then purchased a 2002 Mercedes Benz from HBL, Inc. with a base price of \$42,620.00 with a deposit of \$3,162.00 towards the vehicle and financing the remaining. Shortly thereafter, Mr. Kendall, acting on behalf of himself and Prestige, told Mr. Rutherford that he had a buyer for the 1999 Audi, but the purchaser would only be able to make payments of \$700.00 per month and that Mr. Kendall would take that money and pay her car payment for the 2002 Mercedes Benz directly to the finance company. Unknown to Ms. Rutherford, on or about October 12, 2001, Mr. Kendall sold her 1999 Audi to a purchaser for \$28,500.00. It was apparent that Mr. Kendall had kept the cash, forged her signature on the odometer disclosure statement and the title to the 1999 Audi, when he sold the vehicle. Mr. Kendall had allegedly concealed the sale of the vehicle by continuing to make payments on the 2002 Mercedes Benz until approximately 2002.

On December 9, 2002, Mr. Rutherford received a notice from her finance company advising her that her payments were late and threatened to repossess her vehicle. On December 10, 2002, Ms. Rutherford contacted Mr. Kendall and inquired as to the status of the payments for her 2002 Mercedes. On December 12, Mr. Kendall sent Ms. Rutherford a facsimile containing the alleged recent payments on her account. Relying on this payment accounting, she thought the matter had been straightened out and took no further action. On January 20, 2003, Ms. Rutherford's finance company repossessed the 2002 Mercedes. Ms. Rutherford was forced to pay \$7,222.96 for amounts over-due and related costs in order to retrieve the vehicle from her finance company. On January 24, 2003, Mr. Rutherford obtained a Car Fax report on the 1999 Audi. In February 2003, Mr. Rutherford actually received confirmation that her 1999 Audi had in fact been sold for cash.

Ms. Rutherford then sought legal counsel in order to pursue Steven Kendall and Prestige Motor Coach, Inc. civilly in court for her monies for the sale of her 1999 Audi and the damages she incurred due to the repossession of her 2002 Mercedes. On December 20, 2004, Thomas Breeden, counsel on behalf of Ms. Rutherford, submitted to the Dealer Board a Motion of Judgment that had been filed against Prestige Motor Coach, Inc. t/a Auto Wholesalers of Fairfax and Steven Kendall. On January 25, 2005, the Dealer Board sent a letter to counsel referring his client's claim to the surety bonding company for Prestige Motor Coach, Inc. t/a/Autos Wholesale. Further, the letter advised counsel that on 10/29/03 Prestige Motor Coach, Inc. t/a Autos Wholesale did a corporation name change to Autos Wholesale, Inc. t/a Autos Wholesale, Inc.

On March 29, 2005, Mr. Breeden submitted a letter to the Dealer indicating that when they submitted the lawsuit to the Dealer Board, Mr. Kendall provided them with a the wrong bonding company and that the dealership was no longer in business. On April 4, 2005, Wanda Neely spoke with Mr. Breeden and indicated that the Dealer Board did not show Prestige Motor Coach, Inc. t/a Auto Wholesalers of Fairfax as a licensed entity. The records did show Prestige Motor Coach, Inc. t/a Autos Wholesale and referred him to the Dealer Board's letter of January 25, 2005. On June 1, 2006, Mr. Breeden submitted on behalf of Ms. Rutherford, the Judgment Claim Request form, a copy of the judgment order and copies of all the court proceedings. Also, additional documents submitted was the initial Motion for Judgment against Prestige Motor Coach, Inc. t/a Auto Wholesalers of Fairfax.

On June 9, 2006, the Dealer Board sent a letter to Mr. Breeden acknowledging receipt of the claim. Further, the Dealer Board had not received any confirmation from the surety bond company that a claim against the bond had been made or that the bond had paid any amount of this claim. Therefore, the claim will be held in abeyance until the Dealer Board has received written notification. On August 31, 2006, Mr. Breeden submitted a letter to the Dealer Board in regards to the notification of exhaustion of the surety bond. He indicated that the bonding company had taken the position that there was no bond for the transaction, as the actions involved pre-dated the initiation of the bond. Unless the Board was able to provide information that the bond was existence at the time of the transaction, he was in agreement with the bonding company and therefore re-submits their claim against the Fund.

Under Virginia Code Section 46.2-1527.3, in relevant part states who is eligible for recovery from the Fund: "Whenever any person is awarded a final judgment in a court of competent jurisdiction in the Commonwealth for (1) **any loss or damage in connection with the purchase** or lease of a motor vehicle by reason of any fraud practiced on him or fraudulent representations made to him by a licensed or registered motor vehicle dealer or one of a dealer's salesperson..." (Empasis added). It further appears that judgment may have been awarded against the wrong licensed entity. Judgment was awarded against Prestige Motor Coach, Inc. t/a Auto Wholesalers of Fairfax. The records show that at the time of the transaction the correct licensed entity was John W. Hawk t/a Auto Wholesalers of Fairfax and on 10/1/02 a new dealership was established as Prestige Motor Coach, In. t/a Autos Wholesale.

It does not appear that Ms. Rutherford's claim meets the criteria for payment from the Fund, pursuant to the above mentioned code. After carefully reviewing all documentation, staff recommends that the Recovery Fund Committee and Full Board denies Ms. Rutherford's claim against the Fund. On February 28, 2007, an informal fact-finding conference was conducted and based on the information presented at the conference the hearing officer conducting the conference recommended that the Transaction Recovery Fund Committee and the Full Board members consider denying Ms. Rutherford's claim against the Fund.

Motion was made by Lynn Hooper to accept the hearing officer's recommendation. Vince Sheehy seconded. The motion carried unanimously.

NEW BUSINESS FROM THE FLOOR

There was no old business from the floor.

The next meeting was scheduled for May 14, 2007.

The meeting adjourned at 11:23 a.m.